

105TH CONGRESS  
1ST SESSION

# S. 1180

To reauthorize the Endangered Species Act.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 16, 1997

Mr. KEMPTHORNE (for himself, Mr. CHAFEE, Mr. BAUCUS, and Mr. REID)  
introduced the following bill; which was read twice and referred to the  
Committee on Environment and Public Works

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## A BILL

To reauthorize the Endangered Species Act.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Endangered Species Recovery Act of 1997”.

6       (b) TABLE OF CONTENTS.—The table of contents for  
7       this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Listing and delisting species.
- Sec. 3. Enhanced recovery planning.
- Sec. 4. Interagency consultation and cooperation.
- Sec. 5. Conservation plans.
- Sec. 6. Enforcement.
- Sec. 7. Education and technical assistance.
- Sec. 8. Authorization of appropriations.
- Sec. 9. Other amendments.

1 (c) REFERENCES TO ENDANGERED SPECIES ACT.—

2 Except as otherwise expressly provided, whenever in this  
 3 Act an amendment or repeal is expressed in terms of an  
 4 amendment to, or repeal of, a section or other provision,  
 5 the reference shall be considered to be made to that sec-  
 6 tion or provision of the Endangered Species Act (16  
 7 U.S.C. 1531 et seq.).

8 **SEC. 2. LISTING AND DELISTING SPECIES.**

9 (a) BEST SCIENTIFIC AND COMMERCIAL DATA  
 10 AVAILABLE.—Section 3 of the Act (16 U.S.C. 1532) is  
 11 amended—

12 (1) by striking the title and inserting the fol-  
 13 lowing:

14 “DEFINITIONS AND GENERAL PROVISIONS”;

15 (2) by striking “For the purposes of this  
 16 Act—” and inserting the following:

17 “(a) DEFINITIONS.—For purposes of this Act—”;

18 and

19 (3) by adding at the end the following new sub-  
 20 section:

21 “(b) GENERAL PROVISIONS.—

22 “(1) BEST SCIENTIFIC AND COMMERCIAL DATA  
 23 AVAILABLE.—Where this Act requires the Secretary  
 24 to use the best scientific and commercial data avail-  
 25 able, the Secretary shall when evaluating comparable  
 26 data give greater weight to scientific or commercial

1 data that is empirical, field-tested or peer-re-  
 2 viewed.”.

3 (b) CONFORMING AMENDMENT.—The table of con-  
 4 tents in the first section (16 U.S.C. 1531) is amended by  
 5 striking the item relating to section 3 and inserting the  
 6 following:

“Sec. 3. Definitions and general provisions.”.

7 (c) LISTING AND DELISTING.—

8 (1) FACTORS CONSIDERED FOR LISTING.—Sec-  
 9 tion 4(a)(1) is amended—

10 (A) in subparagraph (C) by inserting “in-  
 11 troduced species, competition,” prior to “dis-  
 12 ease or predation”; and

13 (B) in subparagraph (D) by inserting  
 14 “Federal, State and local government and inter-  
 15 national” prior to “regulatory mechanisms”.

16 (2) CRITICAL HABITAT.—Section 4(a) is  
 17 amended by striking paragraph (3).

18 (3) DELISTING.—Section 4(b)(2) is amended to  
 19 read as follows:

20 “(2) DELISTING.—The Secretary shall, in ac-  
 21 cordance with section 5 and upon a determination  
 22 that the goals of the recovery plan for a species have  
 23 been met, initiate the procedures for determining, in  
 24 accordance with subsection (a)(1), whether to re-

1       move a species from a list published under sub-  
2       section (c).”

3               (4) RESPONSE TO PETITIONS.—Section 4(b)(3)  
4       is amended to read as follows:

5               “(3) RESPONSE TO PETITIONS.—

6                       “(A) ACTION MAY BE WARRANTED.—

7                               “(i) IN GENERAL.—To the maximum  
8                               extent practicable, within 90 days after re-  
9                               ceiving the petition of an interested person  
10                              under section 553(e) of title 5, United  
11                              States Code, to—

12                                       “(I) add a species to,

13                                       “(II) remove a species from, or

14                                       “(III) change a species status  
15                                      from a previous determination with  
16                                      respect to

17                                      either of the lists published under sub-  
18                                      section (c), the Secretary shall make a  
19                                      finding as to whether the petition presents  
20                                      substantial scientific or commercial infor-  
21                                      mation indicating that the petitioned ac-  
22                                      tion may be warranted. If a petition is  
23                                      found to present such information, the  
24                                      Secretary shall promptly commence a re-  
25                                      view of the status of the species concerned

1 the Secretary shall promptly publish each  
2 finding made under this subparagraph in  
3 the Federal Register.

4 “(ii) MINIMUM DOCUMENTATION.—A  
5 finding that the petition presents the infor-  
6 mation described in clause (i) shall not be  
7 made unless the petition provides—

8 “(I) documentation that the fish,  
9 wildlife, or plant that is the subject of  
10 the petition is a species as defined in  
11 section 3;

12 “(II) a description of the avail-  
13 able data on the historical and current  
14 range and distribution of the species;

15 “(III) an appraisal of the avail-  
16 able data on the status and trends of  
17 populations of the species;

18 “(IV) an appraisal of the avail-  
19 able data on the threats to the spe-  
20 cies; and

21 “(V) an identification of the in-  
22 formation contained or referred to in  
23 the petition that has been peer-re-  
24 viewed or field-tested.

1                   “(iii)   NOTIFICATION    TO    THE  
2                   STATES.—

3                   “(I)   PETITIONED   ACTIONS.—If  
4                   the petition is found to present the in-  
5                   formation described in clause (i), the  
6                   Secretary shall notify and provide a  
7                   copy of the petition to the State agen-  
8                   cy in each State in which the species  
9                   is believed to occur and solicit the as-  
10                  sessment of the agency, to be submit-  
11                  ted to the Secretary within 90 days of  
12                  notification, as to whether the peti-  
13                  tioned action is warranted.

14                  “(II)   OTHER   ACTIONS.—If the  
15                  Secretary has not received a petition  
16                  for a species and the Secretary is con-  
17                  sidering proposing to list such species  
18                  as either threatened or endangered  
19                  under subsection (a), the Secretary  
20                  shall notify the State agency in each  
21                  State in which the species is believed  
22                  to occur and solicit the assessment of  
23                  the agency, to be submitted to the  
24                  Secretary within 90 days of the notifi-  
25                  cation, as to whether the listing would

1 be in accordance with the provisions  
2 of subsection (a).

3 “(III) CONSIDERATION OF STATE  
4 ASSESSMENTS.—Prior to publication  
5 of a determination that a petitioned  
6 action is warranted or a proposed reg-  
7 ulation, the Secretary shall consider  
8 any State assessments submitted  
9 within the comment period established  
10 by subclause (I) or (II).

11 “(B) PETITION TO CHANGE STATUS OR  
12 DELIST.—A petition may be submitted to the  
13 Secretary under subparagraph (A) to change  
14 the status of or to remove a species from either  
15 of the lists published under subsection (c) in ac-  
16 cordance with subsection (a)(1), if—

17 “(i) the current listing is no longer  
18 appropriate because of a change in the fac-  
19 tors identified in subsection (a)(1); or

20 “(ii) with respect to a petition to re-  
21 move a species from either of the lists—

22 “(I) new data or a reinterpretation  
23 of prior data indicates that re-  
24 moval is appropriate;

25 “(II) the species is extinct; or

1 “(III) the recovery goals estab-  
2 lished  
3 for the species in a recovery plan approved  
4 under section 5(h) have been achieved.

5 “(C) DETERMINATION.—Within 12 months  
6 after receiving a petition that is found under  
7 subparagraph (A)(i) to present substantial in-  
8 formation indicating that the petitioned action  
9 may be warranted, the Secretary shall make  
10 one of the following findings:

11 “(i) NOT WARRANTED.—The peti-  
12 tioned action is not warranted, in which  
13 case the Secretary shall promptly publish  
14 the finding in the Federal Register.

15 “(ii) WARRANTED.—The petitioned  
16 action is warranted, in which case the Sec-  
17 retary shall promptly publish in the Fed-  
18 eral Register a general notice and the com-  
19 plete text of a proposed regulation to im-  
20 plement the action in accordance with  
21 paragraph (5).

22 “(iii) WARRANTED BUT PRE-  
23 CLUDED.—The petitioned action is war-  
24 ranted, but that—



1 “(I) the immediate proposal and  
2 timely promulgation of a final regula-  
3 tion implementing the petitioned ac-  
4 tion in accordance with paragraphs  
5 (5) and (6) is precluded by pending  
6 proposals to determine whether any  
7 species is an endangered species or a  
8 threatened species; and

9 “(II) expeditious progress is  
10 being made to add qualified species to  
11 either of the lists published under  
12 subsection (c) and to remove from the  
13 lists species for which the protections  
14 of the Act are no longer necessary,  
15 in which case the Secretary shall promptly  
16 publish the finding in the Federal Register,  
17 together with a description and evaluation  
18 of the reasons and data on which the find-  
19 ing is based.

20 “(D) SUBSEQUENT DETERMINATION.—A  
21 petition with respect to which a finding is made  
22 under subparagraph (C)(iii) shall be treated as  
23 a petition that is resubmitted to the Secretary  
24 under subparagraph (A) on the date of such  
25 finding and that presents substantial scientific

1 or commercial information that the petitioned  
2 action may be warranted.

3 “(E) JUDICIAL REVIEW.—Any negative  
4 finding described in subparagraph (A)(i) and  
5 any finding described in subparagraph (C)(i) or  
6 (iii) shall be subject to judicial review.

7 “(F) MONITORING AND EMERGENCY LIST-  
8 ING.—The Secretary shall implement a system  
9 to monitor effectively the status of all species  
10 with respect to which a finding is made under  
11 subparagraph (C)(iii) and shall make prompt  
12 use of the authority under paragraph (7) to  
13 prevent a significant risk to the well-being of  
14 any such species.”.

15 (5) PROPOSED REGULATIONS.—Section 4(b)(5)  
16 is amended by—

17 (A) striking “(5) With respect to any regu-  
18 lation” and inserting the following:

19 “(5) PROPOSED REGULATIONS AND REVIEW.—  
20 With respect to any regulation”;

21 (B) striking “a determination, designation,  
22 or revision” and inserting “a determination or  
23 change in status”;

24 (C) striking “(a)(1) or (3),” and inserting  
25 “(a)(1),”;

1 (D) striking “in the Federal Register,”  
2 and inserting “in the Federal Register as pro-  
3 vided by paragraph (8),”; and

4 (E) striking subparagraph (E) and insert-  
5 ing the following:

6 “(E) at the request of any person within  
7 45 days after the date of publication of general  
8 notice, promptly hold at least 1 public hearing  
9 in each State that would be affected by the pro-  
10 posed regulation (including at least 1 hearing in  
11 an affected rural area, if any) except that the  
12 Secretary may not be required to hold more  
13 than 5 hearings under this clause.”.

14 (7) FINAL REGULATIONS.—

15 (A) SCHEDULE.—Section 4(b)(6)(A) is  
16 amended to read as follows:

17 “(A) IN GENERAL.—Within the 1-year pe-  
18 riod beginning on the date on which general no-  
19 tice is published in accordance with paragraph  
20 (5)(A)(i) regarding a proposed regulation, the  
21 Secretary shall publish in the Federal Reg-  
22 ister—

23 “(i) a final regulation to implement  
24 the determination,

1 “(ii) notice that the 1-year period is  
 2 being extended under subparagraph (B)(i),  
 3 or

4 “(iii) notice that the proposed regula-  
 5 tion is being withdrawn under subpara-  
 6 graph (B)(ii), together with the finding on  
 7 which such withdrawal is based.”.

8 (B) CONFORMING AMENDMENTS.—Section  
 9 4(b)(6) is amended—

10 (i) in subparagraph (B)(i) by striking  
 11 “or revision”;

12 (ii) in subparagraph (B)(iii), by strik-  
 13 ing “or revision concerned, a finding that  
 14 the revision should not be made,”; and

15 (iii) by striking subparagraph (C).

16 (8) PUBLICATION OF DATA AND INFORMA-  
 17 TION.—Section 4(b)(8) is amended by—

18 (A) striking “a summary by the Secretary  
 19 of the data” and inserting “a summary by the  
 20 Secretary of the best scientific and commercial  
 21 data available”;

22 (B) striking “is based and shall” and in-  
 23 serting “is based, shall”; and

24 (C) striking “regulation; and if such regu-  
 25 lation designates or revises critical habitat, such

1 summary shall, to the maximum extent prac-  
2 ticable, also include a brief description and eval-  
3 uation of those activities (whether public or pri-  
4 vate) which, in the opinion of the Secretary, if  
5 undertaken may adversely modify such habitat,  
6 or may be affected by such designation.” and  
7 inserting “regulation, and shall provide, to the  
8 degree that it is relevant and available, infor-  
9 mation regarding the status of the affected spe-  
10 cies, including current population, population  
11 trends, current habitat, food sources, predators,  
12 breeding habits, captive breeding efforts, gov-  
13 ernmental and non-governmental conservation  
14 efforts, or other pertinent information.”.

15 (9) SOUND SCIENCE.—Section 4(b) is amended  
16 by adding at the end the following:

17 “(9) ADDITIONAL DATA.—

18 “(A) IN GENERAL.—The Secretary shall  
19 identify and publish in the Federal Register  
20 with the notice of a proposed regulation pursu-  
21 ant to paragraph (5)(A)(i) a description of ad-  
22 ditional scientific and commercial data that  
23 would assist in the preparation of a recovery  
24 plan and—

1 “(i) invite any person to submit the  
2 data to the Secretary; and

3 “(ii) describe the steps that the Sec-  
4 retary plans to take for acquiring addi-  
5 tional data.

6 “(B) RECOVERY PLANNING.—Data identi-  
7 fied and obtained under subparagraph (A) shall  
8 be considered by the recovery team and the Sec-  
9 retary in the preparation of the recovery plan in  
10 accordance with section 5.

11 “(C) NO DELAY AUTHORIZED.—Nothing in  
12 this paragraph shall be deemed to waive or ex-  
13 tend any deadline for publishing a final rule to  
14 implement a determination (except for the ex-  
15 tension provided in paragraph (6)(B)(i)) or any  
16 deadline under section 5.

17 “(10) INDEPENDENT SCIENTIFIC REVIEW.—

18 “(A) IN GENERAL.—In the case of a regu-  
19 lation proposed by the Secretary to implement  
20 a determination under subsection (a)(1) that  
21 any species is an endangered species or a  
22 threatened species or that any species currently  
23 listed as an endangered species or a threatened  
24 species should be removed from any list pub-  
25 lished pursuant to subsection (c), the Secretary

1 shall provide for independent scientific peer re-  
2 view by—

3 “(i) selecting independent referees  
4 pursuant to subparagraph (B);

5 “(ii) requesting the referees to con-  
6 duct the review, considering all relevant in-  
7 formation, and make a recommendation to  
8 the Secretary in accordance with this para-  
9 graph not later than 150 days after the  
10 general notice is published pursuant to  
11 paragraph (5)(A)(i).

12 “(B) SELECTION OF REFEREES.—For  
13 each independent scientific review to be con-  
14 ducted pursuant to subparagraph (A), the Sec-  
15 retary shall select 3 independent referees from  
16 a list provided by the National Academy of  
17 Sciences, who—

18 “(i) through publication of peer-re-  
19 viewed scientific literature or other means,  
20 have demonstrated scientific expertise on  
21 the species or a similar species or other  
22 scientific expertise relevant to the decision  
23 of the Secretary under subsection (a);

24 “(ii) do not have, or represent any  
25 person with, a conflict of interest with re-

1           spect to the determination that is the sub-  
2           ject of the review; and

3           “(iii) are not participants in a petition  
4           to list, change the status of, or remove the  
5           species under paragraph (3)(A)(i), the as-  
6           sessment of a State for the species under  
7           paragraph (3)(A)(iii), or the proposed or  
8           final determination of the Secretary.

9           “(C) FINAL DETERMINATION.—The Sec-  
10          retary shall take one of the actions under para-  
11          graph (6)(A) of this subsection not later than  
12          1 year after the date of publication of the gen-  
13          eral notice of the proposed determination. If the  
14          referees have made a recommendation in ac-  
15          cordance with clause (ii) of subparagraph (A),  
16          the Secretary shall evaluate and consider the in-  
17          formation that results from the independent sci-  
18          entific review and include in the final deter-  
19          mination—

20               “(i) a summary of the results of the  
21               independent scientific review; and

22               “(ii) in cases where the recommenda-  
23               tion of a majority of the referees who con-  
24               ducted the independent scientific review  
25               under subparagraph (A) are not followed,



1 an explanation as to why the recommenda-  
 2 tion was not followed.

3 “(D) FEDERAL ADVISORY COMMITTEE  
 4 ACT.—The referees selected pursuant to this  
 5 paragraph shall not be subject to the Federal  
 6 Advisory Committee Act (5 U.S.C. App.).”.

7 (10) LISTS.—Section 4(c) is amended by—

8 (A) inserting “designated” before “critical  
 9 habitat”; and

10 (B) striking “determinations, designations  
 11 and revisions” and inserting “determinations”.

12 (11) PROTECTIVE REGULATION.—Section 4(d)  
 13 is amended by—

14 (A) striking “Whenever any species is list-  
 15 ed” and inserting the following:

16 “(1) IN GENERAL.—Whenever any species is  
 17 listed”; and

18 (B) adding at the end the following:

19 “(2) NEW LISTINGS.—With respect to each spe-  
 20 cies listed as a threatened species after the date of  
 21 enactment of the Endangered Species Recovery Act  
 22 of 1997, regulations applicable under paragraph (1)  
 23 to the species shall be specific to that species by the  
 24 date on which the Secretary is required to approve

1 a recovery plan for the species pursuant to section  
2 5(c) and may be subsequently revised.”.

3 (12) RECOVERY PLANS.—Section 4 is amended  
4 by striking subsection (f) and redesignating sub-  
5 sections (g) through (i) as subsections (f) through  
6 (h), respectively.

7 (13) CONFORMING AMENDMENT.—Section 4(g)  
8 (as redesignated by paragraph (12)) is amended in  
9 paragraph (4) by striking “subsection (f) of this sec-  
10 tion” and inserting “section 5”.

11 (d) PUBLIC AVAILABILITY OF DATA.—Section 3(b),  
12 as amended by subsection (a), is amended by adding at  
13 the end the following:

14 “(2) FREEDOM OF INFORMATION ACT EXEMPTION.—  
15 The Secretary, and the head of any other Federal agency  
16 upon the recommendation of the Secretary, may withhold  
17 or limit the availability of data requested to be released  
18 pursuant to section 552 of title 5, United States Code,  
19 if the data describes or identifies the location of an endan-  
20 gered species, a threatened species, or a species that has  
21 been proposed to be listed as threatened or endangered,  
22 and release of the data would be likely to result in in-  
23 creased take of the species.”.

1 **SEC. 3. ENHANCED RECOVERY PLANNING.**

2 (a) REDESIGNATION.—Section 5 of the Act is rededesignated as section 5A.

3 (b) RECOVERY PLANS.—The Act is amended by inserting prior to section 5A (as redesignated by subsection 4 (a)) the following:

5 “RECOVERY PLANS

6 “SEC. 5. (a) IN GENERAL.—The Secretary, in cooperation with the States, and on the basis of the best 7 scientific and commercial data available, shall develop and 8 implement plans (referred to in this Act as “recovery 9 plans”) for the conservation and recovery of endangered 10 species and threatened species that are indigenous to the 11 United States or in waters under the jurisdiction of the 12 United States in accordance with the requirements and 13 schedules described in this section, unless the Secretary 14 finds, after notice and opportunity for public comment, 15 that a plan will not promote the conservation of the species 16 or because an existing plan or strategy to conserve 17 the species already serves as the functional equivalent to 18 a recovery plan. The Secretary may authorize a State 19 agency to develop recovery plans pursuant to subsection 20 (m).

21 (b) PRIORITIES.—To the maximum extent practicable, the Secretary, in developing recovery plans, shall 22 23 24 25

1 give priority, without regard to taxonomic classification,  
2 to recovery plans that—

3 “(1) address significant and immediate threats  
4 to the survival of an endangered species or a threat-  
5 ened species, have the greatest likelihood of achiev-  
6 ing recovery of the endangered species or the threat-  
7 ened species, and will benefit species that are more  
8 taxonomically distinct;

9 “(2) address multiple species including (A) en-  
10 dangered species, (B) threatened species, or (C) spe-  
11 cies that the Secretary has identified as candidates  
12 or proposed for listing under section 4 and that are  
13 dependent on the same habitat as the endangered  
14 species or threatened species covered by the plan;

15 “(3) reduce conflicts with construction, develop-  
16 ment projects, jobs or other economic activities; and

17 “(4) reduce conflicts with military training and  
18 operations.

19 “(c) SCHEDULE.—For each species determined to be  
20 an endangered species or a threatened species after the  
21 date of enactment of the Endangered Species Recovery  
22 Act of 1997 for which the Secretary is required to develop  
23 a recovery plan under subsection (a), the Secretary shall  
24 publish—

1           “(1) not later than 18 months after the date of  
2           the publication under section 4 of the final regula-  
3           tion containing the listing determination, a draft re-  
4           covery plan; and

5           “(2) not later than 30 months after the date of  
6           publication under section 4 of the final regulation  
7           containing the listing determination, a final recovery  
8           plan.

9           “(d) APPOINTMENT AND ROLE OF RECOVERY  
10          TEAM.—

11           “(1) IN GENERAL.—Not later than 60 days  
12           after the date of the publication under section 4 of  
13           the final regulation containing the listing determina-  
14           tion for a species, the Secretary, in cooperation with  
15           the affected States, shall either appoint a recovery  
16           team to develop a recovery plan for the species or  
17           publish a notice pursuant to paragraph (3) that a  
18           recovery team shall not be appointed. Recovery  
19           teams shall include the Secretary and at least one  
20           representative from the State agency of each of the  
21           affected States choosing to participate and be broad-  
22           ly representative of the constituencies with an inter-  
23           est in the species and its recovery and in the eco-  
24           nomic or social impacts of recovery including rep-  
25           resentatives of Federal agencies, tribal governments,

1 local governments, academic institutions, private in-  
2 dividuals and organizations, and commercial enter-  
3 prises. The recovery team members shall be selected  
4 for their knowledge of the species or for their exper-  
5 tise in the elements of the recovery plan or its imple-  
6 mentation.

7 “(2) DUTIES OF THE RECOVERY TEAM.—Each  
8 recovery team shall prepare and submit to the Sec-  
9 retary the draft recovery plan that shall include the  
10 team’s recommended recovery measures and alter-  
11 natives, if any, to meet the recovery goal under sub-  
12 section (e)(1). The recovery team may also be called  
13 upon by the Secretary to assist in the implementa-  
14 tion, review and revision of recovery plans. The re-  
15 covery team shall also advise the Secretary concern-  
16 ing the designation of critical habitat, if any.

17 “(3) EXCEPTION.—

18 “(A) IN GENERAL.—Notwithstanding para-  
19 graph (1), the Secretary may, after notice and  
20 opportunity for public comment, establish cri-  
21 teria to identify species for which the appoint-  
22 ment of a recovery team would not be required  
23 under this subsection, taking into account the  
24 availability of resources for recovery planning,  
25 the extent and complexity of the expected recov-

1           ery activities and the degree of scientific uncer-  
2           tainty associated with the threats to the species.

3           “(B) STATE OPTION.—If the Secretary  
4           elects not to appoint a recovery team, the Sec-  
5           retary shall provide notice to each affected  
6           State and shall provide the affected States the  
7           opportunity to appoint a recovery team and de-  
8           velop a recovery plan, in accordance with the  
9           requirements and procedures set out in sub-  
10          section (m).

11          “(C) SECRETARIAL DUTY.—In the event  
12          that a recovery team is not appointed, the Sec-  
13          retary shall perform all duties of the recovery  
14          team required by this section.

15          “(4) TRAVEL EXPENSES.—The Secretary is au-  
16          thorized to provide travel expenses (including per  
17          diem in lieu of subsistence at the same level as au-  
18          thorized by section 5703 of title 5, United States  
19          Code) to recovery team members.

20          “(5) FEDERAL ADVISORY COMMITTEE ACT.—  
21          The Federal Advisory Committee Act (5 U.S.C.  
22          App.) shall not apply to the selection or activities of  
23          a recovery team appointed pursuant to this sub-  
24          section or subsection (m).

1       “(e) CONTENTS OF RECOVERY PLANS.—Each recov-  
2   ery plan shall contain:

3               “(1) BIOLOGICAL RECOVERY GOAL.—

4                       “(A) IN GENERAL.—Not later than 6  
5                   months after the appointment of a recovery  
6                   team under this section, those members of the  
7                   recovery team with relevant scientific expertise  
8                   shall establish and submit to the Secretary of  
9                   recommended biological recovery goal to con-  
10                  serve and recover the species that, when met,  
11                  would result in the determination, in accordance  
12                  with the provisions of section 4, that the species  
13                  be removed from the list. The goal shall be  
14                  based solely on the best scientific and commer-  
15                  cial data available. The recovery goal shall be  
16                  expressed as objective and measurable biological  
17                  criteria. When the goal is met, the Secretary  
18                  shall be required to initiate the procedures for  
19                  determining whether, in accordance with section  
20                  4(a)(1), to remove the species from the list.

21                       “(B) PEER REVIEW.—The recovery team  
22                   shall promptly obtain independent scientific re-  
23                   view of the recommended biological recovery  
24                   goal.



1           “(2) RECOVERY MEASURES.—The recovery plan  
2       shall incorporate recovery measures that will meet  
3       the recovery goal.

4           “(A) MEASURES.—The recovery measures  
5       may incorporate general and site-specific meas-  
6       ures for the conservation and recovery of the  
7       species such as—

8                   “(i) actions to protect and restore  
9                   habitat;

10                   “(ii) research;

11                   “(iii) establishment of refugia, captive  
12                   breeding, releases of experimental popu-  
13                   lations;

14                   “(iv) actions that may be taken by  
15                   Federal agencies, including actions that  
16                   use, to the maximum extent practicable,  
17                   Federal lands; and

18                   “(v) opportunities to cooperate with  
19                   State and local governments and other per-  
20                   sons to recover species, including through  
21                   the development and implementation of  
22                   conservation plans under section 10.

23           “(B) DRAFT RECOVERY PLANS.—

24                   “(i) IN GENERAL.—In developing a  
25                   draft recovery plan, the recovery team or,

1 if there is no recovery team, the Secretary,  
2 shall consider alternative measures and  
3 recommend measures to meet the recovery  
4 goal including the benchmarks. The recov-  
5 ery measures shall achieve an appropriate  
6 balance among the following factors—

7 “(I) the effectiveness of the  
8 measures in meeting the recovery  
9 goal;

10 “(II) the period of time in which  
11 the recovery goal is likely to be  
12 achieved, provided that the time pe-  
13 riod within which the recovery goal is  
14 to be achieved will not pose a signifi-  
15 cant risk to recovery of the species;  
16 and

17 “(III) the social and economic  
18 impacts (both quantitative and quali-  
19 tative) of the measures and their dis-  
20 tribution across regions and indus-  
21 tries.

22 “(ii) DESCRIPTION OF ALTER-  
23 NATIVES.—The draft plan shall include a  
24 description of any alternative recovery  
25 measures considered, but not included in

1 the recommended measures, and an expla-  
2 nation of how any such measures consid-  
3 ered were assessed and the reasons for  
4 their selection or rejection.

5 “(iii) DESCRIPTION OF ECONOMIC EF-  
6 FECTS.—If the recommended recovery  
7 measures identified in clause (i) would im-  
8 pose significant costs on a municipality,  
9 county, region or industry, the recovery  
10 team shall prepare a description of the  
11 overall economic effects on the public and  
12 private sections including, as appropriate,  
13 effects on employment public revenues, and  
14 value of property as a result of the imple-  
15 mentation of the recovery plan.

16 “(3) BENCHMARKS.—The recovery plan shall  
17 include objective, measurable benchmarks expected  
18 to be achieved over the course of the recovery plan  
19 to determine whether progress is being made to-  
20 wards the recovery goal.

21 “(4) FEDERAL AGENCIES.—Each recovery plan  
22 for an endangered species or a threatened species  
23 shall identify Federal agencies that authorize, fund,  
24 or carry out actions that are likely to have a signifi-

1 cant impact on the prospects for recovering the spe-  
2 cies.

3 “(f) PUBLIC NOTICE AND COMMENT.—

4 “(1) IN GENERAL.—If the Secretary makes a  
5 preliminary determination that the draft recovery  
6 plan meets the requirements of this section, the Sec-  
7 retary shall publish in the Federal Register and a  
8 newspaper of general circulation in each affected  
9 State a notice of availability and a summary of, and  
10 a request for public comment on, the draft recovery  
11 plan including a description of the economic effects  
12 prepared under subsection (e)(2)(B)(iii) and the rec-  
13 ommendations of the independent referees on the re-  
14 covery goal.

15 “(2) HEARINGS.—At the request of any person,  
16 the Secretary shall hold at least 1 public hearing on  
17 each draft recovery plan in each State to which the  
18 plan would apply (including at least 1 hearing in an  
19 affected rural area, if any), except that the Sec-  
20 retary may not be required to hold more than 5  
21 hearings under this paragraph.

22 “(g) PROCUREMENT AUTHORITY.—The Secretary, in  
23 developing and implementing recovery plans, may procure  
24 the services of appropriate public and private agencies and  
25 institutions and other qualified persons.

1       “(h) REVIEW AND SELECTION BY THE SEC-  
2 RETARY.—

3               “(1) REVIEW AND APPROVAL.—The Secretary  
4       shall review each plan submitted by a recovery team,  
5       including a recovery team appointed by a State pur-  
6       suant to the authority of subsection (m), to deter-  
7       mine whether the plan was developed in accordance  
8       with the requirements of this section. If the Sec-  
9       retary determines that the plan does not satisfy such  
10      requirements, the Secretary shall notify the recovery  
11      team and give the team an opportunity to address  
12      the concerns of the Secretary and resubmit a plan  
13      that satisfies the requirements of this section. After  
14      notice and opportunity for public comment on the  
15      recommendations of the recovery team, the Sec-  
16      retary shall adopt a final recovery plan that is con-  
17      sistent with the requirements of this section.

18              “(2) SECTION OF RECOVERY MEASURES.—In  
19      each final plan the Secretary shall select recovery  
20      measures that meet the recovery goal and the bench-  
21      marks. The recovery measures shall achieve an ap-  
22      propriate balance among the factors in subclauses  
23      (I) through (III) of subsection (e)(2)(B)(i).

24              “(3) MEASURES RECOMMENDED BY RECOVERY  
25      TEAM.—If the Secretary selects measures other than

1 those recommended by the recovery team, the Sec-  
 2 retary shall publish with the final plan an expla-  
 3 nation of why the measures recommended by the re-  
 4 covery team were not selected for the final recovery  
 5 plan.

6 “(4) PUBLICATION OF NOTICE ON FINAL  
 7 PLANS.—The Secretary shall publish in the Federal  
 8 Register a notice of availability, and a summary, of  
 9 the final recovery plan, and include in the final re-  
 10 covery plan a response to significant comments that  
 11 the Secretary received on the draft recovery plan.

12 “(i) REVIEW.—

13 “(1) EXISTING PLANS—Not later than 5 years  
 14 after date of enactment of Endangered Species re-  
 15 covery Act of 1997, the Secretary shall review recov-  
 16 ery plans published prior to such date.

17 “(2) SUBSEQUENT PLANS.—The Secretary shall  
 18 review each recovery plan first approved or revised  
 19 under this section subsequent to the enactment of  
 20 the Endangered Species Recovery Act of 1997, not  
 21 later than 10 years after the date of approval or re-  
 22 vision of the plan and every 10 years thereafter.

23 “(j) REVISION OF RECOVERY PLANS.—Notwith-  
 24 standing any other provisions of this section, the Secretary  
 25 shall revise a recovery plan if the Secretary finds that sub-

1   stantial new information, that may include the failure to  
 2   meet the benchmarks included in the plan, based upon the  
 3   best scientific and commercial data available, indicates  
 4   that the recovery goals contained in the recovery plan will  
 5   not achieve the conservation and recovery of the endan-  
 6   gered species or threatened species covered by the plan.  
 7   The Secretary shall convene a recovery team to develop  
 8   the revisions required by this subsection, unless the Sec-  
 9   retary has established an exception for the species pursu-  
 10   ant to subsection (d)(3).

11       “(k) EXISTING PLANS.—Nothing in this section shall  
 12   be interpreted to require the modification of—

13               “(1) a recovery plan approved, or

14               “(2) a recovery plan on which public notice and  
 15       comment has been initiated,

16   prior to the date of enactment of the Endangered Species  
 17   Recovery Act of 1997 until revised by the Secretary in  
 18   accordance with this section.

19       “(l) IMPLEMENTATION OF RECOVERY PLANS.—

20               “(1) IMPLEMENTATION AGREEMENTS.—The  
 21   Secretary is authorized to enter into agreements  
 22   with Federal agencies, affected States, Indian tribes,  
 23   local governments, private landowners and organiza-  
 24   tions to implement specified conservation measures  
 25   identified by an approved recovery plan that promote

1 the recovery of the species on lands or waters owned  
2 by, or within the jurisdiction of, each such party.  
3 The Secretary may enter into such agreements, if  
4 the Secretary, after notice and opportunity for pub-  
5 lic comment, determines that—

6 “(A) each party to the agreement has the  
7 legal authority and capability to carry out the  
8 agreement;

9 “(B) the agreement shall be reviewed and  
10 revised as necessary on a regular basis by the  
11 parties to the agreement to ensure that it meets  
12 the requirements of this section; and

13 (C) the agreement establishes a mechanism  
14 for the Secretary to monitor and evaluate im-  
15 plementation of the agreement.

16 “(2) DUTY OF FEDERAL AGENCIES.—Each  
17 Federal agency identified under subsection (e)(4)  
18 shall enter into an implementation agreement with  
19 the Secretary not later than 2 years after the date  
20 on which the Secretary approves the recovery plan  
21 for the species. For purposes of satisfying this sec-  
22 tion, the substantive provisions of the agreement  
23 shall be within the sole discretion of the Secretary  
24 and the head of the Federal agency entering into the  
25 agreement.



1 “(3) OTHER REQUIREMENTS.—

2 “(A) AGENCY ACTIONS.—Any action au-  
3 thorized, funded or carried out by a Federal  
4 agency that is specified in a recovery plan im-  
5 plementation agreement between the Federal  
6 agency and the Secretary to promote the recov-  
7 ery of the species and for which the agreement  
8 provides sufficient information on the nature,  
9 scope and duration of the action to determine  
10 the effect of the action on any endangered spe-  
11 cies, threatened species, or critical habitat shall  
12 not be subject to the requirements of section  
13 7(a)(2) for that species, provided the action is  
14 to be carried out during the term of such agree-  
15 ment and the Federal agency is in compliance  
16 with the agreement.

17 “(B) COMPREHENSIVE AGREEMENTS.—If  
18 a non-Federal person proposes to include in an  
19 implementation agreement a site-specific action  
20 that the Secretary determines meets the re-  
21 quirements of subparagraph (A) and that action  
22 would require authorization or funding by one  
23 or more Federal agencies, the agencies author-  
24 izing or funding the action shall participate in  
25 the development of the agreement and shall

1 identify, at that time, all measures for the spe-  
2 cies that would be required under this Act as a  
3 condition of the authorization or funding.

4 “(4) FINANCIAL ASSISTANCE—

5 “(A) IN GENERAL.—In cooperation with  
6 the States and subject to the availability of ap-  
7 propriations under section 13(f), the Secretary  
8 may provide a grant of up to \$25,000 to any  
9 individual private landowner to assist the land-  
10 owner in carrying out a recovery plan imple-  
11 mentation agreement under this subsection.

12 “(B) PROHIBITION ON ASSISTANCE FOR  
13 REQUIRED ACTIVITIES.—The Secretary may not  
14 provide assistance under this paragraph for any  
15 action that is required by a permit issued under  
16 this Act or that is otherwise required under this  
17 Act or other Federal law.

18 “(C) OTHER PAYMENTS.—Grants provided  
19 to an individual private landowner under this  
20 paragraph shall be in addition to, and not af-  
21 fect, the total amount of payments the land-  
22 owner is otherwise eligible to receive under the  
23 Conservation Reserve Program (16 U.S.C. 3831  
24 et seq.), the Wetlands Reserve Program (16

1 U.S.C. 3837 et seq.), or the Wildlife Habitat  
 2 Incentives Program (16 U.S.C. 3836a).

3 “(m) STATE AUTHORITY FOR RECOVERY PLAN-  
 4 NING.—

5 “(1) IN GENERAL.—At the request of the Gov-  
 6 ernor of a State, or the Governors of several States  
 7 in cooperation, the Secretary may authorize the re-  
 8 spective State agency to develop the recovery plan  
 9 for an endangered species or a threatened species  
 10 in accordance with the requirements and schedules  
 11 of subsections (c), (d)(1), (d)(2), and (e) and this  
 12 subsection if the Secretary finds that—

13 “(A) the State or States have entered into  
 14 a cooperative agreement with the Secretary pur-  
 15 suant to section 6(c); and

16 “(B) the State agency has submitted a  
 17 statement to the Secretary demonstrating ade-  
 18 quate authority and capability to carry out the  
 19 requirements and schedules of subsections (c),  
 20 (d)(1), (d)(2), and (e) of this subsection.

21 “(2) STANDARDS AND GUIDELINES.—The Sec-  
 22 retary, in cooperation with the States, shall publish  
 23 standards and guidelines for the development of re-  
 24 covery plans by a State agency under this sub-  
 25 section, including standards and guidelines for inter-

1 state cooperation and for the grant and withdrawal  
2 of authorization under this subsection by the Sec-  
3 retary.

4 “(3) MEMBERS AND DUTIES OF RECOVERY  
5 TEAM.—Each recovery team appointed by a State  
6 agency under this subsection shall include the Sec-  
7 retary. The recovery team shall prepare a draft re-  
8 covery plan in accordance with the requirements of  
9 this section and shall transmit the draft plan to the  
10 Secretary through the State agency authorized to  
11 develop the recovery plan.

12 “(4) REVIEW OF DRAFT PLANS.—Prior to pub-  
13 lication of a notice of availability of a draft recovery  
14 plan, the Secretary shall review each draft recovery  
15 plan developed pursuant to this subsection to deter-  
16 mine whether it meets the requirements of this sec-  
17 tion. If the Secretary determines that the plan does  
18 not meet such requirements, the Secretary shall no-  
19 tify the State agency and, in cooperation with such  
20 State agency, develop a recovery plan in accordance  
21 with the requirements of this section.

22 “(5) REVIEW AND APPROVAL OF FINAL  
23 PLANS.—Upon receipt of a draft recovery plan  
24 transmitted by a State agency, the Secretary shall

1 review and approve the plan in accordance with sub-  
2 section (h).

3 “(6) WITHDRAWAL OF AUTHORITY.—

4 “(A) IN GENERAL.—The Secretary may  
5 withdraw the authority from a State that has  
6 been authorized to develop a recovery plan pur-  
7 suant to this subsection if the actions of the  
8 State agency are not in accordance with the  
9 substantive and procedural requirements of sub-  
10 sections (c), (d)(1), (d)(2), and (e) of this sub-  
11 section. The Secretary shall give the State  
12 agency an opportunity to correct any defi-  
13 ciencies identified by the Secretary and shall  
14 withdraw the authority from the State unless  
15 the State agency within 60 days has corrected  
16 the deficiencies identified by the Secretary.  
17 Upon withdrawal of State authority pursuant to  
18 this subsection, the Secretary shall have an ad-  
19 ditional 18 months to publish a draft recovery  
20 plan and an additional 12 months to publish a  
21 final recovery plan under subsection 5(c).

22 “(B) PETITIONS TO WITHDRAW.—Any per-  
23 son may submit a petition requesting the Sec-  
24 retary to withdraw the authority from a State  
25 on the basis that the actions of the State agen-

cy are not in accordance with the substantive and procedural requirements identified in subparagraph (A). If the Secretary has not acted on the petition pursuant to subparagraph (A) within 90 days, the petition shall be deemed denied and the denial shall be a final agency action for the purposes of judicial review.

“(7) STATE AGENCY.—For purposes of this subsection, the term ‘State agency’ includes—

“(A) State agencies (as defined in section 3) of the several States submitting a cooperative request under paragraph (1); and

“(B) for fish and wildlife, including related spawning grounds and habitat, on the Columbia River and its tributaries, the Pacific Northwest Electric Power and Conservation Planning Council established under the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839 et seq.).

“(n) CRITICAL HABITAT DESIGNATION.—

“(1) RECOMMENDATION OF THE RECOVERY TEAM.—Not later than 9 months after the date of publication under section 4 of a final regulation containing a listing determination for a species, the recovery team appointed for the species shall provide

1 the Secretary with a description of any habitat of  
2 the species that is recommended for designation as  
3 critical habitat pursuant to this subsection and any  
4 recommendations for special management consider-  
5 ations or protection that are specific to such habitat.

6 “(2) DESIGNATION BY THE SECRETARY.—The  
7 Secretary, to the maximum extent prudent and de-  
8 terminable, shall be regulation designate any habitat  
9 of an endangered species or a threatened species  
10 that is indigenous to the United States or waters  
11 under the jurisdiction of the United States that is  
12 considered to be critical habitat.

13 “(A) DESIGNATION.—

14 “(i) PROPOSAL.—Not later than 18  
15 months after the date on which a final list-  
16 ing determination is made under section 4  
17 for a species, the Secretary, after consulta-  
18 tion and in cooperation with the recovery  
19 team, shall publish in the Federal Register  
20 a proposed regulation designating critical  
21 habitat for the species.

22 “(ii) PROMULGATION.—The Secretary  
23 shall, after consultation and in cooperation  
24 with the recovery team, publish a final reg-  
25 ulation designating critical habitat for a

1 species not later than 30 months after the  
2 date on which a final listing determination  
3 is made under section 4 for the species.

4 “(B) OTHER DESIGNATIONS.—If a recov-  
5 ery plan is not developed under this section for  
6 an endangered species or a threatened species,  
7 the Secretary shall publish a final critical habi-  
8 tat determination for that endangered species  
9 or threatened species within 36 months after  
10 making a determination that the species is an  
11 endangered species or a threatened species.

12 “(C) ADDITIONAL AUTHORITY.—The Sec-  
13 retary may publish a regulation designating  
14 critical habitat for an endangered species or a  
15 threatened species concurrently with the final  
16 regulation implementing the determination that  
17 the species is endangered or threatened if the  
18 Secretary determines that designation of such  
19 habitat at the time of listing is essential to  
20 avoid the imminent extinction of the species.

21 “(3) FACTORS TO BE CONSIDERED.—The des-  
22 ignation of critical habitat shall be made on the  
23 basis of the best scientific and commercial data  
24 available and after taking into consideration the eco-  
25 nomic impact, impacts to military training and oper-



1        ations, and any other relevant impact, of specifying  
2        any particular area as critical habitat. The Secretary  
3        shall describe the economic impacts and other rel-  
4        evant impacts that are to be considered under this  
5        subsection in the publication of any proposed regula-  
6        tion designating critical habitat.

7            “(4) EXCLUSIONS.—The Secretary may exclude  
8        any area from critical habitat for a species if the  
9        Secretary determines that the benefits of the exclu-  
10       sion outweigh the benefits of designating the area as  
11       part of the critical habitat, unless the Secretary de-  
12       termines that the failure to designate the area as  
13       critical habitat will result in the extinction of the  
14       species.

15           “(5) REVISIONS.—The Secretary may, from  
16        time-to-time and as appropriate, revise a designa-  
17        tion. Each area designated as critical habitat before  
18        the date of enactment of the Endangered Species  
19        Recovery Act of 1997 shall continue to be considered  
20        so designated, until the designation is revised in ac-  
21        cordance with this subsection.

22           “(6) PETITIONS.—

23                   “(A) DETERMINATION THAT REVISION  
24                   MAY BE WARRANTED.—To the maximum extent  
25                   practicable, within 90 days after receiving the

1 petition of an interested person under section  
2 553(e) of title 5, United States Code, to revise  
3 a critical habitat designation, the Secretary  
4 shall make a finding as to whether the petition  
5 presents substantial scientific or commercial in-  
6 formation indicating that the revision may be  
7 warranted. The Secretary shall promptly pub-  
8 lish such finding in the Federal Register.

9 “(B) NOTICE OF PROPOSED ACTION.—

10 Within 12 months after receiving a petition  
11 that is found under subparagraph (A) to  
12 present substantial information indicating that  
13 the requested revision may be warranted, the  
14 Secretary shall determine how to proceed with  
15 the requested revision, and shall promptly pub-  
16 lish notice of such intention in the Federal Reg-  
17 ister.

18 “(7) PROPOSED AND FINAL REGULATIONS.—

19 Any regulation to designate critical habitat or imple-  
20 ment a requested revision shall be proposed and pro-  
21 mulgated in accordance with paragraphs (4), (5)  
22 and (6) of section 4(b) in the same manner as a reg-  
23 ulation to implement a determination with respect to  
24 listing a species.

1       “(o) REPORTS.—The Secretary shall report every two  
 2 years to the Committee on Environment and Public Works  
 3 of the Senate and the Committee on Resources of the  
 4 House of Representatives on the status of efforts to de-  
 5 velop and implement recovery plans for all species listed  
 6 pursuant to section 4 and on the status of all species for  
 7 which such plans have been developed.”.

8       (c) CITIZEN SUITS.—Section 11(g)(1)(C) of the Act  
 9 (16 U.S.C. 1540(g)(1)(C)) is amended by inserting “or  
 10 section 5” after “section 4”.

11       (d) CONFORMING AMENDMENTS FOR RECOVERY  
 12 PLANNING.—

13               (1) Section 6(d)(1) is amended by striking “sec-  
 14 tion 4(g)” and inserting “section 4(f)”.

15               (2) Section 10(f)(5) is amended by striking the  
 16 last sentence.

17               (3) Sections 104(c)(4)(A)(ii)(I), 115(b)(2), and  
 18 118(f)(11) of the Marine Mammal Protection Act  
 19 are amended by striking “section 4(f)” each place it  
 20 occurs and inserting “section 5”.

21               (4) The table of contents in the first section (16  
 22 U.S.C. 1531) is amended by striking the item relat-  
 23 ed to section 5 and inserting the following:

“Sec. 5. Recovery plans.  
 Sec. 5A. Land acquisition.”.

1       (e) PLANS FOR PREVIOUSLY LISTED SPECIES.—In  
 2 the case of species included in the list published under  
 3 section 4(c) before the date of enactment of this Act, and  
 4 for which no recovery plan was developed before that date,  
 5 the Secretary shall develop a final recovery plan in accord-  
 6 ance with the requirements of section 5 (including the pri-  
 7 orities of section 5(b)) of the Endangered Species Act (16  
 8 U.S.C. 1531 et seq.), as amended by this Act, for not less  
 9 than one-half of the species not later than 36 months after  
 10 the date of enactment of this Act and for all species not  
 11 later than 60 months after such date.

12 **SEC. 4. INTERAGENCY CONSULTATION AND COOPERATION.**

13       (a) REASONABLE AND PRUDENT ALTERNATIVES.—  
 14 Section 3 (16 U.S.C. 1532) is amended by redesignating  
 15 paragraphs (15) through (21) as paragraphs (16) through  
 16 (22), respectively, and inserting the following new para-  
 17 graph after paragraph (14):

18       “(15) REASONABLE AND PRUDENT ALTER-  
 19 NATIVES.—The term ‘reasonable and prudent alternatives’  
 20 means alternative actions identified during consultation  
 21 that can be implemented in a manner consistent with the  
 22 intended purpose of the action, that can be implemented  
 23 consistent with the scope of the Federal agency’s legal au-  
 24 thority and jurisdiction, that are economically and techno-  
 25 logically feasible, and that the Secretary believes would

1 avoid the likelihood of jeopardizing the continued existence  
2 of listed species or resulting in the destruction or adverse  
3 modification of critical habitat.”.

4 (b) INVENTORY OF SPECIES ON FEDERAL LANDS.—  
5 Section 7(a)(1)(16 U.S.C. 1536(a)(1)) is amended by—

6 (1) inserting “(A)” after “(1)”; and

7 (2) adding the following at the end thereof:

8 “(B) INVENTORY OF SPECIES ON FEDERAL  
9 LANDS.—The head of each Federal agency that is  
10 responsible for the management of lands and wa-  
11 ters—

12 “(i) shall by not later than December 31,  
13 2003, prepare and provide to the Secretary an  
14 inventory of the presence or occurrence of en-  
15 dangered species, threatened species, species  
16 that have been proposed for listing, and species  
17 that the Secretary has identified as candidates  
18 for listing under section(4), that are located on  
19 lands or waters owned or under control of the  
20 agency; and

21 “(ii) shall at least once every 5 years  
22 thereafter update the inventory required by  
23 clause (1) including newly listed, proposed and  
24 candidate species.”.

1       (c) CONSULTATION.—Section 7(a)(3) (16 U.S.C.  
2 1536(a)(3)) is amended to read as follows:

3           “(3) CONSULTATION.—

4               “(A) NOTIFICATION OF ACTIONS.—Prior  
5 to commencing any action, each Federal agency  
6 shall notify the Secretary if the agency deter-  
7 mines that the action may affect an endangered  
8 species or a threatened species or critical habi-  
9 tat.

10           (B) AGENCY DETERMINATION.—

11               “(i) IN GENERAL.—Each Federal  
12 agency shall consult with the Secretary as  
13 required by paragraph (2) on each action  
14 for which notification is required under  
15 subparagraph (A) unless—

16               “(I) the Federal agency makes a  
17 determination based on the opinion of  
18 a qualified biologist that the action is  
19 not likely to adversely affect an en-  
20 dangered species, a threatened species  
21 or critical habitat;

22               “(II) the Federal agency notifies  
23 the Secretary that it has determined  
24 that the action is not likely to ad-  
25 versely affect any listed species or

critical habitat and provides the Secretary, along with the notice, a copy of the information on which the agency based the determination; and

“(III) the Secretary does not object in writing to the agency’s determination within 60 days from the date such notice is received.

“(ii) ACTIONS EXCLUDED.—The Secretary may by regulation identify categories of actions with respect to specific endangered species or threatened species that the Secretary determines are likely to have an adverse effect on the species or its critical habitat and, for which, the procedures of clause (i) shall not apply.

“(iii) BASIS FOR OBJECTION.—The Secretary shall object to a determination made by a Federal agency pursuant to clause (i), if—

“(I) the Secretary determines that the action may have an adverse effect on an endangered species, a threatened species or critical habitat; or

1                   “(II) the Secretary finds that  
2                   there is insufficient information in the  
3                   documentation accompanying the de-  
4                   termination to evaluate the impact of  
5                   the proposed action on endangered  
6                   species, threatened species, or critical  
7                   habitat; or

8                   “(III) the Secretary finds that,  
9                   because of the nature of the action  
10                  and its potential impact on an endan-  
11                  gered species, a threatened species or  
12                  critical habitat, review cannot be com-  
13                  pleted in 60 days.

14                  “(iv) NAS REVIEW.—Not later than 3  
15                  years after the date of enactment of this  
16                  clause, the Secretary shall enter into ap-  
17                  propriate arrangements with the National  
18                  Academy of Sciences to conduct a review  
19                  of and prepare a report on the determina-  
20                  tions made by Federal agencies pursuant  
21                  to clause (i). The report shall be transmit-  
22                  ted to the Congress not later than 5 years  
23                  after the date of enactment of this clause.

24                  “(v) REPORTS.—The Secretary shall  
25                  report to the Congress not less often than



1           biennially with respect to the implementation  
2           of this subparagraph including in the re-  
3           port information on the circumstances that  
4           resulted in the Secretary making any ob-  
5           jection to a determination made by a Fed-  
6           eral agency under clause (i) and the avail-  
7           ability of resources to carry out the re-  
8           quirements of this section.

9           “(C) CONSULTATION AT REQUEST OF AP-  
10          PLICANT.—Subject to such guidelines as the  
11          Secretary may establish, a Federal agency shall  
12          consult with the Secretary on any prospective  
13          agency action at the request of, and in coopera-  
14          tion with, the prospective permit or license ap-  
15          plicant if the applicant has reason to believe  
16          that an endangered species or a threatened spe-  
17          cies may be present in the area affected by the  
18          applicant’s project and that implementation of  
19          the action will likely affect the species.”.

20          (d) GAO REPORT.—The Comptroller General of the  
21          United States shall report to the Committee on Environ-  
22          ment and Public Works of the Senate and to the Commit-  
23          tee on Resources of the House of Representatives not later  
24          than 3 years after the date of enactment of this Act, and  
25          2 years thereafter, on the cost of formal consultation to

1 Federal agencies and other persons carrying out actions  
 2 subject to the requirements of section 7 of the Endangered  
 3 Species Act (16 U.S.C. 1536), including the cost of rea-  
 4 sonable and prudent measures imposed.

5 (e) NEW LISTINGS.—Section 7(a) (16 U.S.C.  
 6 1536(a)) is amended by adding at the end the following:

7 “(5) EFFECT OF LISTING ON EXISTING  
 8 PLANS.—

9 “(A) ACTIONS.—For the purposes of para-  
 10 graph (2), the term ‘action’ includes land use  
 11 plans under the Federal Land Policy and Man-  
 12 agement Act (43 U.S.C. 1701 et seq.) and re-  
 13 source management plans under the Forest and  
 14 Rangeland Renewable Resources Planning Act  
 15 (16 U.S.C. 1600 et seq.), as amended by the  
 16 National Forest Management Act (16 U.S.C.  
 17 1600 et seq.).

18 “(B) RE-INITIATION OF CONSULTATION.—  
 19 Whenever a determination to list a species as  
 20 an endangered species or a threatened species  
 21 or designation of critical habitat requires re-ini-  
 22 tiation of consultation under section 7(a)(2) on  
 23 an already approved action as defined under  
 24 subparagraph (A), the consultation shall com-  
 25 mence promptly, but no later than 90 days

1 after the date of the determination or designa-  
2 tion, and be completed within 12 months of the  
3 date on which the consultation is commenced.

4 “(C) SITE-SPECIFIC ACTIONS DURING CON-  
5 SULTATION.—Notwithstanding subsection (d),  
6 the Federal agency implementing the land use  
7 plan or resource management plan under sub-  
8 paragraph (B) may authorize, fund, or carry  
9 out a site-specific ongoing or previously sched-  
10 uled action with the scope of the plan on such  
11 lands prior to completing consultation on the  
12 plan under subparagraph (B) pursuant to the  
13 consultation procedures of this section and re-  
14 lated regulations, if—

15 “(i) no consultation on the action is  
16 required; or

17 “(ii) consultation on the action is re-  
18 quired and the Secretary issues a biological  
19 opinion and the action satisfies the re-  
20 quirements of this section.”.

21 (f) IMPROVED FEDERAL AGENCY COORDINATION.—

22 Section 7(a) (16 U.S.C. 1536(a)) is amended by adding  
23 at the end the following:

24 “(6) CONSOLIDATION OF CONSULTATION AND CON-  
25 FERENCING.—

1           “(A) CONSULTATION WITH A SINGLE AGEN-  
2           CY.—Consultation and conferencing under this sub-  
3           section between the Secretary and a Federal agency  
4           may, with the approval of the Secretary, encompass  
5           a number of related or similar actions by the agency  
6           to be carried out within a particular geographic  
7           area.

8           “(B) CONSULTATION WITH SEVERAL AGEN-  
9           CIES.—The Secretary may consolidate requests for  
10          consultation or conferencing from various Federal  
11          agencies the proposed actions of which may affect  
12          the same endangered species, threatened species, or  
13          species that have been proposed for listing under  
14          section 4, within a particular geographic area.”.

15          (g) USE OF INFORMATION PROVIDED BY STATES.—  
16          Section 7(b)(1) (16 U.S.C. 1536(b)(1)) is amended by  
17          adding at the end the following:

18          “(C) USE OF STATE INFORMATION.—In conducting  
19          a consultation under subsection (a)(2), the Secretary shall  
20          actively solicit and consider information from the State  
21          agency in each affected State.”.

22          (h) OPPORTUNITY TO PARTICIPATE IN CONSULTA-  
23          TIONS.—Section 7(b)(1) (16 U.S.C. 1536(b)(1)) (as  
24          amended by subsection (g)) is further amended by adding  
25          at the end the following:

1       “(D) OPPORTUNITY TO PARTICIPATE IN CONSULTA-  
2 TIONS.—

3           “(i) IN GENERAL.—In conducting a consulta-  
4 tion under subsection (a)(2), the Secretary shall pro-  
5 vide any person who has sought authorization or  
6 funding for an action from a Federal agency and  
7 that authorization or funding is the subject of the  
8 consultation, the opportunity to—

9           “(I) prior to the development of a draft bi-  
10 ological opinion, submit and discuss with the  
11 Secretary and the Federal agency information  
12 relevant to the effect of the proposed action on  
13 the species and the availability of reasonable  
14 and prudent alternatives (if a jeopardy opinion  
15 is to be issued) that the Federal agency and the  
16 person can take to avoid violation of section  
17 7(a)(2);

18           “(II) receive information, upon request  
19 subject to the exemptions of the Freedom of In-  
20 formation Act (5 U.S.C. 552(b)) on the status  
21 of the species, threats to the species, and con-  
22 servation measures, used by the Secretary to  
23 develop the draft biological opinion and the  
24 final biological opinion, including the associated  
25 incidental take statements; and

1           “(III) received a copy of the draft biological  
 2           cal opinion from the Federal agency and, prior  
 3           to issuance of the final biological opinion, sub-  
 4           mit comments on the draft biological opinion  
 5           and discuss with the Secretary and the Federal  
 6           agency the basis for any finding in the draft bi-  
 7           ological opinion.

8           “(ii) EXPLANATION.—If reasonable and pru-  
 9           dent alternatives are proposed by a person under  
 10          clause (i) and the Secretary does not include the al-  
 11          ternatives in the final biological opinion, the Sec-  
 12          retary shall explain to such person why those alter-  
 13          natives were not included in the opinion.”.

14          (i) INCIDENTAL TAKING STANDARDS FOR FEDERAL  
 15          AGENCIES.—Section 7(b)(4) (16 U.S.C. 1536 (b)(4)) is  
 16          amended—

17               (1) in clause (ii), by inserting “and mitigate”  
 18               after “to minimize”; and

19               (2) by adding at the end the following: “For  
 20               purposes of this subsection, reasonable and prudent  
 21               measures shall be related both in nature and extent  
 22               to the effect of the proposed activity that is the sub-  
 23               ject of the consultation.”.

24          (j) REVISION OF REGULATIONS.—Not later than 1  
 25          year after the date of enactment of the Endangered Spe-

cies Recovery Act of 1997, the Secretary shall promulgate modifications to part 402 of title 50, Code of Federal Regulations, to implement the provisions of this section.

**SEC. 5. CONSERVATION PLANS.**

(a) PERMIT FOR TAKE ON THE HIGH SEAS.—Section 10(a)(1)(B) (16 U.S.C. 1539(a)(1)(B)) is amended by striking “section 9(a)(1)(B)” and inserting in lieu thereof “subparagraph (B) or (C) of section 9(a)(1)”.

(b) MONITORING.—Section 10(a)(2)(B) (16 U.S.C. 1539(a)(2)(B)) is amended by striking “reporting” and inserting in lieu thereof “monitoring and reporting”.

(c) OTHER PLANS.—Section 10(a) (16 U.S.C. 1539(a)) is amended by striking paragraph (2)(C) and inserting the following new paragraphs:

“(3) MULTIPLE SPECIES CONSERVATION PLANS.—

“(A) IN GENERAL.—In addition to one or more listed species, a conservation plan developed under paragraph (2) may, at the request of the applicant, include species proposed for listing under section 4(c), candidate species, or other species found on lands or waters owned or within the jurisdiction of the applicant covered by the plan.

“(B) APPROVAL CRITERIA.—The Secretary shall approve an application for a permit under paragraph (1)(B) that includes species other than

1 species listed as endangered species or threatened  
2 species if, after notice and opportunity for public  
3 comment, the Secretary finds that the permit appli-  
4 cation and the related conservation plan satisfy the  
5 criteria of paragraphs (2)(A) and (2)(B) with re-  
6 spect to listed species, and that the permit applica-  
7 tion and the related conservation plan with respect  
8 to other species satisfy the following requirements:

9 “(i) The impact on non-listed species in-  
10 cluded in the plan will be incidental;

11 “(ii) The applicant will, to the maximum  
12 extent practicable, minimize and mitigate such  
13 impacts;

14 “(iii) The actions taken by the applicant  
15 with respect to species proposed for listing or  
16 candidates for listing included in the plan, if  
17 undertaken by all similarly situated persons  
18 within the range of such species, are likely to  
19 eliminate the need to list the species as an en-  
20 dangered species or a threatened species for the  
21 duration of the agreement as a result of the ac-  
22 tivities conducted by those persons;

23 “(iv) The actions taken by the applicant  
24 with respect to other non-listed species included  
25 in the plan, if undertaken by all similarly situ-



1           ated persons within the range of such species,  
2           would not be likely to contribute to a deter-  
3           mination to list the species as an endangered  
4           species or a threatened species for the duration  
5           of the agreement;

6                   “(v) The criteria of paragraphs (2)(A)(iv),  
7                   (2)(B)(iii) and (2)(B)(v); and

8           the Secretary has received such other assurances as  
9           the Secretary may require that the plan will be im-  
10          plemented. The permit shall contain such terms and  
11          conditions as the Secretary deems necessary or ap-  
12          propriate to carry out the purposes of this para-  
13          graph, including, but not limited to, such monitoring  
14          and reporting requirements as the Secretary deems  
15          necessary for determining whether such terms and  
16          conditions are being complied with.

17                   “(C) TECHNICAL ASSISTANCE AND GUID-  
18                   ANCE.—To the maximum extent practicable, the  
19                   Secretary and the heads of other Federal agencies,  
20                   in cooperation with the States, are authorized and  
21                   encouraged to provide technical assistance or guid-  
22                   ance to any State or person that is developing a  
23                   multiple species conservation plan under this para-  
24                   graph. In providing technical assistance or guidance,

1 priority shall be given to landowners that might oth-  
2 erwise encounter difficulty in developing such a plan.

3 “(D) DEADLINES.—A conservation plan devel-  
4 oped pursuant to this paragraph shall be reviewed  
5 and approved or disapproved not later than 1 year  
6 after the date of submission, or within such other  
7 period of time as is mutually agreeable to the Sec-  
8 retary and the applicant.

9 “(E) STATE AND LOCAL LAW.—

10 “(i) OTHER SPECIES.—Nothing in this  
11 paragraph shall limit the authority of a State or  
12 local government with respect to fish, wildlife or  
13 plants that have not been listed as an endan-  
14 gered species or a threatened species under sec-  
15 tion 4.

16 “(ii) COMPLIANCE.—An action by the Sec-  
17 retary, the Attorney General, or a person under  
18 section 11(g) to ensure compliance with a mul-  
19 tiple species conservation plan and permit  
20 under this paragraph may only be brought  
21 against a permittee or the Secretary.

22 “(F) EFFECTIVE DATE OF PERMIT FOR NON-  
23 LISTED SPECIES.—For any species not listed as an  
24 endangered species or a threatened species, but cov-  
25 ered by an approved multiple species conservation

1 plan, the permit issued under paragraph (1)(B) shall  
2 take effect without further action by the Secretary  
3 at the time the species is listed pursuant to section  
4 4(c), and to the extent that the taking is otherwise  
5 prohibited by subparagraphs (B) or (C) of section  
6 9(a)(1).

7 “(4) LOW EFFECT ACTIVITIES.—

8 “(A) IN GENERAL.—Notwithstanding para-  
9 graph (2)(A), the Secretary may issue a permit for  
10 a low effect activity authorizing any taking referred  
11 to in paragraph (1)(B), if the Secretary determines  
12 that the activity will have no more than a negligible  
13 effect, both individually and cumulatively, on the  
14 species, any taking associated with the activity will  
15 be incidental, and the taking will not appreciably re-  
16 duce the likelihood of the survival and recovery of  
17 the species in the wild. The permit shall require, to  
18 the extent appropriate, actions to be taken by the  
19 permittee to offset the effects of the activity on the  
20 species.

21 “(B) APPLICATIONS.—The Secretary shall min-  
22 imize the costs of permitting to the applicant by de-  
23 veloping, in cooperation with the States, model per-  
24 mit applications that would constitute conservation  
25 plans for low effect activities.

1           “(C) PUBLIC COMMENT; EFFECTIVE DATE.—

2           Upon receipt of a permit application for an activity  
3           that meets the requirements of subparagraph (A),  
4           the Secretary shall provide notice in a newspaper of  
5           general circulation in the area of the activity not  
6           later than 30 days after receipt and an opportunity  
7           for comment on the permit. If the Secretary does  
8           not receive significant adverse comment within 30  
9           days of the notice, the permit shall take effect with-  
10          out further action by the Secretary 45 days after the  
11          notice is published.

12          “(5) NO SURPRISES.—

13               “(A) IN GENERAL.—Each conservation plan de-  
14               veloped under this subsection shall include a no sur-  
15               prises provision, as described in this paragraph.

16               “(B) NO SURPRISES.—A person who has en-  
17               tered into, and is in compliance with, a conservation  
18               plan under this subsection may not be required to  
19               undertake any additional mitigation measures for  
20               species covered by such plan if such measures would  
21               require the payment of additional money, or the  
22               adoption of additional use, development or manage-  
23               ment restrictions on any land, waters or water-relat-  
24               ed rights that would otherwise be available under the  
25               terms of the plan without the consent of the permit-

tee. The Secretary and the applicant, by the terms  
of the conservation plan, shall identify—

“(i) other modifications to the plan; or

“(ii) other additional measures,

if any, that the Secretary may require under extraordinary circumstances.

“(6) PERMIT REVOCATION.—After notice and an opportunity for correction, as appropriate, the Secretary shall revoke a permit issued under this subsection if the Secretary finds that the permittee is not complying with the terms and conditions of the permit or the conservation plan.”.

(d) CANDIDATE CONSERVATION AGREEMENTS.—

(1) PERMITS.—Section 10(a)(1) (16 U.S.C. 1539(a)(1)) is amended by—

(A) deleting “or” at the end of subparagraph (A);

(B) striking the period at the end of subparagraph (B) and inserting “; or”; and

(C) adding the following subparagraph at the end—

“(C) any taking incidental to, and not the purpose of, the carrying out of an otherwise lawful activity pursuant to a candidate conservation agreement.”.

1           (2) AGREEMENTS.—Section 10 (16 U.S.C.  
2       1539) is amended by adding at the end thereof the  
3       following:

4       “(k) CANDIDATE CONSERVATION AGREEMENTS.—

5           “(1) IN GENERAL.—At the request of any non-  
6       Federal person, the Secretary may enter into a can-  
7       didate conservation agreement with that person for  
8       a species that has been proposed for listing under  
9       section 4(c)(1), is a candidate species, or is likely to  
10      become a candidate species in the near future on  
11      property owned or under the jurisdiction of the per-  
12      son requesting such an agreement.

13      “(2) REVIEW BY THE SECRETARY.—

14           “(A) SUBMISSION TO THE SECRETARY.—A  
15      non-Federal person may submit a candidate  
16      conservation agreement developed under para-  
17      graph (1) to the Secretary for review at any  
18      time prior to the listing described in section  
19      4(c)(1) of a species that is the subject of the  
20      agreement.

21           “(B) CRITERIA FOR APPROVAL.—The Sec-  
22      retary may approve an agreement and issue a  
23      permit under subsection (a)(1)(C) for the  
24      agreement if, after notice and opportunity for  
25      public comment, the Secretary finds that—

1           “(i) for species proposed for listing,  
2           candidates for listing, or species that are  
3           likely to become a candidate species in the  
4           near future, that are included in the agree-  
5           ment, the actions taken under the agree-  
6           ment, if undertaken by all similarly situ-  
7           ated persons, would produce a conservation  
8           benefit that would be likely to eliminate  
9           the need to list the species under section  
10          4(c) as a result of the activities of those  
11          persons during the duration of the agree-  
12          ment;

13          “(ii) the actions taken under the  
14          agreement will not adversely affect an en-  
15          dangered species or a threatened species;

16          “(iii) the agreement contains such  
17          other measures that the Secretary may re-  
18          quire as being necessary or appropriate for  
19          the purposes of the agreement;

20          “(iv) the person will ensure adequate  
21          funding to implement the agreement; and

22          “(v) the agreement includes such  
23          monitoring and reporting requirements as  
24          the Secretary deems necessary for deter-

1           mining whether the terms and conditions  
2           of the agreement are being complied with.

3           “(3) EFFECTIVE DATE OF PERMIT.—A permit  
4           issued under subsection (a)(1)(C) shall take effect at  
5           the time the species is listed pursuant to section  
6           4(c), provided that the permittee is in full compli-  
7           ance with the terms and conditions of the agree-  
8           ment.

9           “(4) ASSURANCES.—A person who has entered  
10          into a candidate conservation agreement under this  
11          subsection, and is in compliance with the agreement,  
12          may not be required to undertake any additional  
13          measures for species covered by such agreement if  
14          such measures would require the payment of addi-  
15          tional money, or the adoption of additional use, de-  
16          velopment or management restrictions on any land,  
17          waters, or water-related rights that would otherwise  
18          be available under the terms of the agreement with-  
19          out the consent of the person entering into the  
20          agreement. The Secretary and the person entering  
21          into a candidate conservation agreement, by the  
22          terms of the agreement, shall identify—

23                 “(A) other modifications to the agree-  
24                 ments; or

25                 “(B) other additional measures,



1 if any, that the Secretary may require under ex-  
2 traordinary circumstance.

3 (e) PUBLIC NOTICE.—Section 10(c) (16 U.S.C.  
4 1539(c)) is amended by—

5 (1) striking “thirty” each place that it appears  
6 and inserting in lieu thereof “60”; and

7 (2) inserting before the final sentence the fol-  
8 lowing: “The Secretary may, with approval of the  
9 applicant, provide an opportunity, as early as prac-  
10 ticable, for public participation in the development of  
11 a multiple species conservation plan and permit ap-  
12 plication. If a multiple species conservation plan and  
13 permit application has been developed without the  
14 opportunity for public participation, the Secretary  
15 shall extend the public comment period for an addi-  
16 tional 30 days for interested parties to submit writ-  
17 ten data, views, or arguments on the plan and appli-  
18 cation.”.

19 (f) SAFE HARBOR AGREEMENTS.—Section 10 (16  
20 U.S.C. 1539) is amended by adding at the end thereof  
21 the following new subsection:

22 “(1) SAFE HARBOR AGREEMENTS.—

23 “(1) AGREEMENTS.—

24 “(A) IN GENERAL.—The Secretary may  
25 enter into agreements with non-Federal persons

1 to benefit the conservation of endangered spe-  
2 cies or threatened species by creating, restoring,  
3 or improving habitat or by maintaining cur-  
4 rently unoccupied habitat for endangered spe-  
5 cies or threatened species. Under an agreement,  
6 the Secretary shall permit the person to take  
7 endangered species or threatened species in-  
8 cluded under the agreement on lands or waters  
9 that are subject to the agreement if the taking  
10 is incidental to, and not the purpose of, carry-  
11 ing out of an otherwise lawful activity, provided  
12 that the Secretary may not permit through such  
13 agreements any incidental take below the base-  
14 line requirement specified pursuant to subpara-  
15 graph (B).

16 “(B) BASELINE.—For each agreement  
17 under this subsection, the Secretary shall estab-  
18 lish a baseline requirement that is mutually  
19 agreed upon by the applicant and the Secretary  
20 at the time of the agreement that will, at a  
21 minimum, maintain existing conditions for the  
22 species covered by the agreement on lands and  
23 waters that are subject to the agreement. The  
24 baseline may be expressed in terms of the abun-  
25 dance or distribution of endangered or threat-

1           ened species, quantity or quality of habitat, or  
2           such other indicators as appropriate.

3           “(2) STANDARDS AND GUIDELINES.—the Sec-  
4           retary shall issue standards and guidelines for the  
5           development and approval of safe harbor agreements  
6           in accordance with this subsection.

7           “(3) FINANCIAL ASSISTANCE.—

8                 “(A) IN GENERAL.—In cooperation with  
9           the States and subject to the availability of ap-  
10          propriations under section 15(d), the Secretary  
11          may provide a grant of up to \$10,000 to any  
12          individual private landowner to assist the land-  
13          owner in carrying out a safe harbor agreement  
14          under this subsection.

15                “(B) PROHIBITION ON ASSISTANCE FOR  
16          REQUIRED ACTIVITIES.—The Secretary may not  
17          provide assistance under this paragraph for any  
18          action that is required by a permit issued under  
19          this Act or that is otherwise required under this  
20          Act or other Federal law.

21                “(C) OTHER PAYMENTS.—Grants provided  
22          to an individual private landowner under this  
23          paragraph shall be in addition to, and not af-  
24          fect, the total amount of payments that the  
25          landowner is otherwise eligible to receive under

1 the Conservation Reserve Program (16 U.S.C.  
2 3831 et seq.), the Wetlands Reserve Program  
3 (16 U.S.C. 3837 et seq.), or the Wildlife Habi-  
4 tat Incentives Program (16 U.S.C. 3836a).”.

5 (g) HABITAT RESERVE AGREEMENTS.—Section 10  
6 (16 U.S.C. 1539) is amended by adding at the end thereof  
7 the following new subsection:

8 “(m) HABITAT RESERVE AGREEMENTS.—

9 “(1) PROGRAM.—The Secretary shall establish  
10 a habitat reserve program to be implemented  
11 through contracts or easements of a mutually agreed  
12 upon duration to assist non-Federal property owners  
13 to preserve and manage suitable habitat for endan-  
14 gered species and threatened species.

15 “(2) AGREEMENTS.—The Secretary may enter  
16 into a habitat reserve agreement with a non-Federal  
17 property owner to protect, manage or enhance suit-  
18 able habitat on private property for the benefit of  
19 endangered species or threatened species. Under an  
20 agreement, the Secretary shall make payments in an  
21 agreed upon amount to the property owner for car-  
22 rying out the terms of the habitat reserve agree-  
23 ment, provided that the activities undertaken pursu-  
24 ant to the agreement are not otherwise required by  
25 this Act.

1           “(3) STANDARDS AND GUIDELINES.—The Sec-  
2       retary shall issue standards and guidelines for the  
3       development and approval of habitat reserve agree-  
4       ments in accordance with this subsection. Agree-  
5       ments shall, at a minimum, specify the management  
6       measures, if any, that the property owner will imple-  
7       ment for the benefit of endangered species or threat-  
8       ened species, the conditions under which the prop-  
9       erty may be used, the nature and schedule for any  
10      payments agreed upon by the parties to the agree-  
11      ment, and the duration of the agreement.

12          “(4) PAYMENTS.—Any payment received by a  
13      property owner under a habitat reserve agreement  
14      shall be in addition to and shall not affect the total  
15      amount of payments that the property owner is oth-  
16      erwise entitled to receive under the Agricultural Act  
17      of 1949 (7 U.S.C. 1421 et seq.), as amended by the  
18      Federal Agriculture Improvement and Reform Act of  
19      1996.

20          “(5) AUTHORIZATION OF APPROPRIATIONS.—  
21      There are authorized to be appropriated to the Sec-  
22      retary of Interior \$10,000,000 and the Secretary of  
23      Commerce \$5,000,000 for each of fiscal years 1998  
24      through 2003 to assist non-Federal property owners

1 to carry out the terms of habitat reserve programs  
2 under this subsection.”.

3 (h) HABITAT CONSERVATION PLANNING FUND.—

4 Section 10(a) (16 U.S.C. 1539(a)) is further amended by  
5 adding at the end thereof the following new paragraph:

6 “(7) HABITAT CONSERVATION PLANNING FUND.—

7 “(A) ESTABLISHMENT.—There is established in  
8 the Treasury of the United States a revolving fund,  
9 to be known as the ‘Habitat Conservation Planning  
10 Fund’, to be used in carrying out this subsection  
11 (referred to in this paragraph as the ‘Fund’), con-  
12 sisting of—

13 “(i) amounts made available under section  
14 15(f);

15 “(ii) repayments of advances from the  
16 Fund under subparagraph (C); and

17 “(iii) any interest earned on investment of  
18 amounts in the Fund under subparagraph (D).

19 “(B) EXPENDITURES FROM FUND.—

20 “(i) IN GENERAL.—On request by the Sec-  
21 retary, the Secretary of the Treasury shall  
22 transfer from the Fund to the Secretary such  
23 amounts as the Secretary determines necessary  
24 to make interest-free advances under clause (ii).

1           “(ii) AUTHORITY TO MAKE GRANTS AND  
 2           ADVANCES.—The Secretary may make an inter-  
 3           est-free advance from the Fund to any State,  
 4           county, municipality, or other political subdivi-  
 5           sion of a State to assist in the development of  
 6           a conservation plan under this subsection. The  
 7           amount of the advance under this clause may  
 8           not exceed the total financial contribution of the  
 9           other parties participating in the development  
 10          of the plan.

11           “(iii) CRITERIA FOR ADVANCES.—In deter-  
 12          mining whether to make an advance from the  
 13          Fund, the Secretary shall consider—

14                   “(I) the number of species covered by  
 15                   the plan;

16                   “(II) the extent to which there is a  
 17                   commitment to participate in the planning  
 18                   process from a diversity of interests (in-  
 19                   cluding local governmental, business, envi-  
 20                   ronmental, and landowner interests);

21                   “(III) the likely benefits of the plan;

22                   “(IV) such other factors as the Sec-  
 23                   retary considers appropriate.

24           “(C) REPAYMENTS OF ADVANCES FROM THE  
 25          FUND.—

1           “(i) IN GENERAL.—Except as provided in  
 2           clause (ii) amounts advanced from the Fund  
 3           shall be repaid not later than 10 years after the  
 4           date of the advance.

5           “(ii) ACCELERATED REPAYMENT.—  
 6           Amounts advanced from the Fund shall be re-  
 7           paid—

8                   “(I) not later than 4 years after the  
 9                   date of the advance if no conservation plan  
 10                  is developed within 3 years of the date of  
 11                  the advance; or

12                   “(II) not later than 5 years after the  
 13                   date of the advance if no permit is issued  
 14                   under paragraph (1)(B) with respect to the  
 15                   conservation plan within 4 years of the  
 16                   date of the advance.

17           “(iii) CREDITING OF REPAYMENTS.—  
 18           Amounts received by the United States as re-  
 19           payment of advances from the Fund shall be  
 20           credited to the Fund and made available for  
 21           further advances in accordance with this para-  
 22           graph without further appropriation.

23           “(D) INVESTMENT OF FUND BALANCE.—

24                   “(i) IN GENERAL.—The Secretary of the  
 25           Treasury shall invest such portion of the Fund



as is not, in the judgment of the Secretary, required to meet current withdrawals. Investments may be made only in interest-bearing obligations of the United States.

“(ii) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under clause (i), obligations may be acquired—

“(I) on original issue at the issue price; or

“(II) by purchase of outstanding obligations at the market price.

“(iii) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at market price.

“(iv) CREDITS TO THE FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

“(E) TRANSFERS OF AMOUNTS.—

“(i) IN GENERAL.—The amounts required to be transferred to the Fund under this paragraph shall be transferred at least monthly from the general fund of the Treasury to the

1 Fund on the basis of estimates made by the  
2 Secretary of the Treasury.

3 “(ii) ADJUSTMENTS.—Proper adjustments  
4 shall be made in amounts subsequently trans-  
5 ferred to the extent prior estimates were in ex-  
6 cess of or less than the amounts required to be  
7 transferred.”.

8 (i) EFFECT ON PERMITS AND PROPOSED PLANS.—  
9 No amendment made by this section shall be interpreted  
10 to require the modification of—

11 (1) a permit issued under section 10 of the En-  
12 dangered Species Act (16 U.S.C. 1539); or

13 (2) a conservation plan submitted for approval  
14 pursuant to such section prior to the date of enact-  
15 ment of this Act.

16 (j) RULE-MAKING.—Not later than 1 year after the  
17 date of enactment of this Act, the Secretary shall, after  
18 consultation with the States and notice and opportunity  
19 for public comment, publish final regulations implement-  
20 ing the provisions of section 10(a) of the Endangered Spe-  
21 cies Act (16 U.S.C. 1539(a)), as amended by this section.

22 (k) NAS REPORT.—Not later than 2 years after the  
23 date of enactment of this Act, the Secretary shall enter  
24 into appropriate arrangements with the National Academy  
25 of Sciences to conduct a review of and prepare a report

1 on the development and implementation of conservation  
2 plans under section 10(a) of the Endangered Species Act  
3 (16 U.S.C. 1531 et seq.). The report shall assess the ex-  
4 tent to which those plans comply with the requirements  
5 of that Act, the role of multiple species conservation plans  
6 in preventing the need to list species covered by those  
7 plans, and the relationship of conservation plans for listed  
8 species to implementation of recovery plans. The report  
9 shall be transmitted to the Congress not later than 5 years  
10 after the date of enactment of this Act.

11 **SEC. 6. ENFORCEMENT.**

12 (a) ENFORCEMENT FOR INCIDENTAL TAKE.—Sec-  
13 tion 11 (16 U.S.C. 1540) is amended by adding after sub-  
14 section (g) the following new subsection and redesignating  
15 the subsequent subsection accordingly:

16 “(h) INCIDENTAL TAKE.—In any action under sub-  
17 section (a), (b), or (e)(6) of this section against any person  
18 for an alleged take incidental to the carrying out of an  
19 otherwise lawful activity, the Secretary or the Attorney  
20 General must establish, using scientifically valid prin-  
21 ciples, that the acts of such person have caused, or will  
22 cause, the take, of—

23 “(1) an endangered species, or



1 vate landowners education and technical assistance pro-  
2 gram to—

3 “(1) inform the public about this Act;

4 “(2) respond to requests for technical assist-  
5 ance from property owners interested in conserving  
6 species listed or proposed for listing under section  
7 4(c)(1) and candidate species on the land of the  
8 landowners; and

9 “(3) recognize exemplary efforts to conserve  
10 species on private land.

11 “(b) ELEMENTS OF THE PROGRAM.—Under the pro-  
12 gram, the Secretary shall—

13 “(1) publish educational materials and conduct  
14 workshops for property owners and other members  
15 of the public on the role of this Act in conserving  
16 endangered species and threatened species, the prin-  
17 cipal mechanisms of this Act for achieving species  
18 recovery, and potential sources of technical and fi-  
19 nancial assistance;

20 “(2) assist field offices in providing timely ad-  
21 vice to property owners on how to comply with this  
22 Act;

23 “(3) provide technical assistance to State and  
24 local governments and property owners interested in  
25 developing and implementing recovery plan imple-

1       mentation agreements, conservation plans, and safe  
2       harbor agreements;

3           “(4) serve as a focal point for questions, re-  
4       quests, and suggestions from property owners and  
5       local governments concerning policies and actions of  
6       the Secretary in the implementation of this Act;

7           “(5) provide training for Federal personnel re-  
8       sponsible for implementing this Act on concerns of  
9       property owners, to avoid unnecessary conflicts, and  
10      improving implementation of this Act on private  
11      land; and

12          “(6) nominate for national recognition by the  
13      Secretary property owners that are exemplary man-  
14      agers of land for the benefit of species listed or pro-  
15      posed for listing under section 4(c)(1) or candidate  
16      species.”.

17      (b) CONFORMING AMENDMENT.—The table of con-  
18      tents in the first section is amended by striking the item  
19      related to section 13 and inserting the following:

“Sec. 13. Private landowners education and technical assistance program.”.

20      (c) EFFECT ON PRIOR AMENDMENTS.—Nothing in  
21      this section or the amendments made by this section af-  
22      fects the amendments made by section 13 of the Endan-  
23      gered Species Act of 1973 (87 Stat. 902), as in effect  
24      on the day before the date of enactment of this Act.

1 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) IN GENERAL.—Section 15(a) (16 U.S.C.  
3 1542(a)) is amended—

4 (1) in paragraph (1), by striking “and  
5 \$41,500,000 for fiscal year 1992” and inserting  
6 “\$41,500,000 for fiscal year 1992, \$135,000,000 for  
7 fiscal year 1998, \$150,000,000 for fiscal year 1999,  
8 and \$165,000,000 for each of fiscal years 2000  
9 through 2003”;

10 (2) in paragraph (2), by striking “and  
11 \$6,750,000” and inserting “\$6,750,000”; and in-  
12 serting “,\$50,000,000 for fiscal year 1998,  
13 \$60,000,000 for fiscal year 1999, and \$70,000,000  
14 for each of fiscal years 2000 through 2003” after  
15 “and 1992”; and

16 (3) in paragraph (3), by striking “and  
17 \$2,600,000” and inserting \$2,600,000”; and insert-  
18 ing “, and \$4,000,000 for each of fiscal years 1998  
19 through 2003” after “and 1992”.

20 (b) EXEMPTIONS FROM ACT.—Section 15(b) (16  
21 U.S.C. 1542(b)) is amended by inserting “and \$625,000  
22 for each of fiscal years 1998 through 2003” after “and  
23 1992”.

24 (c) CONVENTION IMPLEMENTATION.—Section 15(c)  
25 (16 U.S.C. 1542(c)) is amended by striking “and  
26 \$500,000” and inserting \$500,000,” and by inserting

1 “and \$1,000,000 for each fiscal year 1998 through 2003”  
2 after “and 1992,”.

3 (d) ADDITIONAL AUTHORIZATIONS.—Section 15 (16  
4 U.S.C. 1542) is further amended by adding the following  
5 at the end:

6 “(d) FINANCIAL ASSISTANCE FOR SAFE HARBOR  
7 AGREEMENTS.—There are authorized to be appropriated  
8 to the Secretary of the Interior \$10,000,000 and the Sec-  
9 retary of Commerce \$5,000,000 for each of fiscal years  
10 1998 through 2003 to carry out section 10(l).

11 “(e) HABITAT CONSERVATION PLANNING FUND.—  
12 There are authorized to be appropriated to the Habitat  
13 Conservation Planning Fund established by section  
14 10(a)(7) \$10,000,000 for each of fiscal years 1998  
15 through 2000 and \$5,000,000 for each of fiscal years  
16 2001 and 2002 to assist in the development of conserva-  
17 tion plans.

18 “(f) FINANCIAL ASSISTANCE FOR RECOVERY PLAN  
19 IMPLEMENTATION.—There are authorized to be appro-  
20 priated to the Secretary of Interior \$30,000,000 and the  
21 Secretary of Commerce \$15,000,000 for each of the fiscal  
22 years 1998 through 2003 to carry out section 5(l)(4).

23 “(g) AVAILABILITY.—Amounts made available under  
24 this section shall remain available until expended.



1       “(h) LIMITATION ON USE OF FUNDS.—Of the funds  
2 made available to carry out section 5 for any fiscal year,  
3 not less than \$32,000,000 shall be available to the Sec-  
4 retary of Interior and not less than \$13,500,000 to the  
5 Secretary of Commerce to implement actions to recover  
6 listed species. Of the funds made available to the Sec-  
7 retary of Interior and the Secretary of Commerce in each  
8 fiscal year to list species, the Secretary of Interior and  
9 the Secretary of Commerce shall use not less than 10%  
10 of those funds in each fiscal year for delisting species. If  
11 any of the funds made available by the previous sentence  
12 are not needed in that fiscal year for delisting eligible spe-  
13 cies, those funds shall be available for listing.”.

14       (e) ASSISTANCE TO STATES FOR CONSERVATION AC-  
15 TIVITIES.—Section 6(i) (16 U.S.C. 1535(i)) is amended  
16 by adding at the end the following:

17       “(3) ASSISTANCE TO STATES FOR CONSERVATION AC-  
18 TIVITIES.—There are authorized to be appropriated to the  
19 Secretary such sums as are necessary for each of fiscal  
20 years 1998 through 2003 to provide financial assistance  
21 to State agencies to carry out conservation activities under  
22 other sections of this Act, including the provision of tech-  
23 nical assistance for the development and implementation  
24 of recovery plans.”.

1 **SEC. 9. OTHER AMENDMENTS.**

2 (a) DEFINITIONS.—

3 (1) CANDIDATE SPECIES.—Section 3 is amend-  
4 ed by inserting the following paragraph after para-  
5 graph (1) and redesignating the subsequent para-  
6 graphs accordingly:

7 “(2) CANDIDATE SPECIES.—The term ‘can-  
8 didate species’ means a species for which the Sec-  
9 retary has on file sufficient information on biological  
10 vulnerability and threats to support a proposal to  
11 list the species as an endangered species or a threat-  
12 ened species, but for which listing is precluded be-  
13 cause of pending proposals to list species that are of  
14 a higher priority. This definition shall not apply to  
15 any species defined as a ‘candidate species’ by the  
16 Secretary of Commerce prior to the date of enact-  
17 ment of the Endangered Species Recovery Act of  
18 1997.”.

19 (2) IN COOPERATION WITH THE STATES.—Sec-  
20 tion 3 (16 U.S.C. 1532) is amended by inserting the  
21 following paragraph after paragraph (11) (as redes-  
22 ignated by this subsection):

23 “(12) IN COOPERATION WITH THE STATES.—  
24 The term ‘in cooperation with the States’ means a  
25 process in which—

“(A) the State agency in each of the affected States, or the State agency’s representative, is given an opportunity to participate in a meaningful and timely manner in the development of the standards, guidelines, and regulations to implement the applicable provisions of this Act; and

“(B) the Secretary carefully considers all substantive concerns raised by the State agency, or the State agency’s representative, and, to the maximum extent practicable consistent with this Act, incorporates their suggestions and recommendations, while retaining final decision making authority.”.

(3) RURAL AREA.—Section 3 (16 U.S.C. 1532) is amended by inserting the following new paragraph after paragraph (16) (redesignated by this subsection and section 4(a)) and redesignating the subsequent paragraphs accordingly:

“(17) RURAL AREA.—The term ‘rural area’ means a county or unincorporated area that has no city or town that has a population of more than 10,000 inhabitants.”.

(4) COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.—Section 3(20) (16 U.S.C. 1532(18))

1 (as redesignated by this subsection and section 4(a))  
 2 is amended by striking “Trust Territories of the Pa-  
 3 cific Islands” and inserting “Commonwealth of the  
 4 Northern Mariana Islands”.

5 (b) FINDINGS, PURPOSES, AND POLICY.—Section  
 6 2(a)(3) (16 U.S.C. 1531(a)(3)) is amended by inserting  
 7 “commercial,” after “recreational,”.

8 (c) NO TAKE AGREEMENTS.—Section 9 (16 U.S.C.  
 9 1538) is amended by adding at the end thereof the follow-  
 10 ing new subsection:

11 “(h) NO TAKE AGREEMENTS.—The Secretary and a  
 12 non-Federal property owner may, at the request of the  
 13 property owner, enter into an agreement identifying activi-  
 14 ties of the property owner that will not result in a violation  
 15 of the prohibitions of paragraphs (1)(B), (1)(C), and  
 16 (2)(B) of section 9(a). The Secretary shall respond to a  
 17 request for an agreement submitted by a property owner  
 18 within 90 days of receipt.”.

19 (d) CONFORMING AMENDMENTS.—

20 (1) TITLE.—The title of section 10 (16 U.S.C.  
 21 1539) is amended to read as follows:

22 “CONSERVATION MEASURES AND EXCEPTIONS”.

23 (2) TABLE OF CONTENTS.—The table of con-  
 24 tents in the first section of the Act is amended with

- 1       respect to the item relating to section 10 to read as
- 2       follows:

“Sec. 10. Conservation measures and exceptions.”.

